

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

TOMMY LEE DYER,)	
)	
Plaintiff,)	
v.)	Case No. CIV-08-679-F
)	
KAY COUNTY DETENTION CENTER,)	
<i>et al.</i> ,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff, appearing *pro se*, has submitted to this Court for filing a civil rights complaint pursuant to 42 U.S.C. §1983 alleging violations of his constitutional rights.

By Order of this Court dated July 18, 2008 (the “July 18th Order”), Plaintiff’s Motion for Leave to Proceed *In Forma Pauperis* was granted; however, Plaintiff was directed to pay an initial partial filing fee of \$10 by August 5, 2008, in accordance with 28 U.S.C. §1915(b) [Doc. #6]. Plaintiff was advised that he would be required to make monthly payments of 20 percent of the preceding month’s income credited to his prison account(s) until the full \$350 filing fee was paid. Plaintiff was further advised that failure either to pay the initial partial filing fee or show cause in writing for the failure to pay could result in dismissal of this action without prejudice to refileing.

Plaintiff failed to pay the initial partial filing fee by August 5, 2008. On August 8, 2008, rather than recommending dismissal of the action for failure to comply with the July 18th Order, the Court *sua sponte* gave Plaintiff additional time until August 27, 2008, in which either to pay the initial filing fee or voluntarily dismiss this action [Doc. #7]. Plaintiff was again advised that failure to comply with the terms of the Order could result in dismissal

of this action without prejudice to refiling.

A review of the Court file reveals that as of this date, Plaintiff has failed to comply with the Court's previous orders. Plaintiff has not made the initial partial payment or any other payment, requested an extension of time within which to pay, demonstrated good cause for his failure to pay, or sought to dismiss his action voluntarily.

RECOMMENDATION

For the reasons set forth above, it is recommended that Plaintiff's action be dismissed without prejudice pursuant to LCvR3.4(a) for failure to comply with the requirements of 28 U.S.C. § 1915(b).

NOTICE OF RIGHT TO OBJECT

Plaintiff is advised of his right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objections must be filed with the Clerk of the District Court by September 30th, 2008. *See* LCvR72.1. Plaintiff is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of the factual and legal issues addressed herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

STATUS OF REFERRAL

This Report and Recommendation disposes of all issues referred by the District Judge in this matter.

ENTERED this 10th day of September, 2008.

A handwritten signature in purple ink, reading "Valerie K. Couch". The signature is fluid and cursive, with the first name "Valerie" and last name "Couch" clearly legible, and "K." as a middle initial.

VALERIE K. COUCH
UNITED STATES MAGISTRATE JUDGE